

October 5, 2020

VIA CM/ECF

The Honorable John G. Koeltl
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007-1312

RE: Summary Judgment Briefing Schedule in *State of New York, et al. v. U.S. Department of Education, et al.*, No. 1:20-cv-4260-JGK (S.D.N.Y.)

Dear Judge Koeltl:

Plaintiffs the State of New York and the Board of Education of the City School District of the City of New York (“Plaintiffs”) write to: (1) advise the Court that Defendants U.S. Department of Education (the “Department”) and Elisabeth DeVos (“Defendants”) intend to supplement the administrative record in this case, and (2) request a further modification of the summary judgment briefing schedule set by the Court on August 24, 2020 [ECF No. 85], as modified on September 21, 2020 [ECF No. 93], to provide Plaintiffs sufficient time to review and consider the documents produced by Defendants in the anticipated supplemental productions before filing their motion for summary judgment.

As the parties previously advised the Court in their joint letter motion on September 18, 2020 [ECF No. 92], Defendants completed their initial production of the administrative record on September 15, 2020, which totaled nearly 300,000 pages. Upon initial review of that record, Plaintiffs and the plaintiffs in two related cases in other jurisdictions identified several categories of documents missing from the record. On September 25, plaintiffs’ counsel in *Victim Rights Law Center, et al., v. DeVos, et al.* No. 1:20-cv-11104-WGY (D. Mass.), on behalf of plaintiffs in the case, *Pennsylvania, et al., v. DeVos, et al.*, No. 20-cv-01468-CJN (D.D.C.), and this case, sent a letter to Defendants’ counsel notifying them of the identified deficiencies and requesting an amendment to the administrative record to cure them. *See* Letter from N. Nolen to R. Kopplin, *et al.* (Sept. 25, 2020) [Ex. A (enclosures omitted)]. On September 30, Defendants’ counsel acknowledged that the administrative record produced to the plaintiffs in the three cases was incomplete in certain respects and indicated that Defendants intended to supplement the administrative record. *See* Emails from R. Kopplin to R. Smith, *et al.* (Sept. 30, 2020) [Ex. B at 2-3]. Defendants stated that the first supplemental production would be made during the week of October 5 and filed with the courts in all three cases shortly thereafter, and that the Department was “still evaluating the timeline” for production of one category of documents. *Id.*

On October 1, Plaintiffs’ counsel emailed Defendants’ attorneys of record in this case, requesting an estimated date of completion of the administrative record and the anticipated volume of the supplemental productions. *See* Email from J. Wardenski to B. Takemoto (Oct. 1, 2020) [Ex. B at 1-2]. On October 2, Defendants’ counsel acknowledged the request, but did not

provide the requested information, stating only that “[o]ur colleagues at the agency are working diligently on these issues, and we will of course keep you updated.” *See* Email from B. Takemoto to J. Wardenski (Oct. 2, 2020) [Ex. B at 1].

Considering the outstanding supplements to the administrative record and the current lack of clarity on when the production of the full record will be complete, Plaintiffs believe that proceeding on the current summary judgment briefing schedule is premature. Accordingly, to provide Plaintiffs sufficient time to review and consider the supplemental record, Plaintiffs request that the Court re-set the briefing deadlines as follows:

- Plaintiffs’ motion for summary judgment: 14 days after Defendants’ filing of the completed administrative record with the Court;
- Defendants’ cross-motion for summary judgment: 28 days after the filing of Plaintiffs’ motion;
- Plaintiffs’ opposition to Defendants’ cross-motion for summary judgment: 28 days after the filing of Defendants’ cross-motion;
- Defendants’ reply brief: 28 days after the filing of Plaintiffs’ opposition brief.

Plaintiffs have sought but not yet obtained Defendants’ consent to the relief requested in this letter motion.

Respectfully submitted,

LETITIA JAMES

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